R. J. E. Leasing Corp. *and* **Richard Gaughran** *and* **Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Party in Interest.** Case 22-CA-9875

June 22, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On December 18, 1981, Administrative Law Judge Winifred D. Morio issued the attached Decision in this proceeding. Thereafter, Respondent and the Party in Interest each filed exceptions and a supporting brief; and the General Counsel filed cross-exceptions and a brief in reply to the exceptions of Respondent and the Party in Interest.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt her recommended Order.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, R. J. E. Leasing Corp., Malverne, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] The Party in Interest also filed a request for oral argument. We hereby deny this request as the record, the exceptions, and the briefs adequately present the issues and positions of the parties.

[2] Respondent and the Party in Interest have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

[3] In her remedy and recommended Order, the Administrative Law Judge found that Respondent should be required to reimburse all present and former employees for all initiation fees, dues, assessments, or any other moneys which may have been paid in favor of Local 814, the Party in Interest. In adopting the Administrative Law Judge's Decision, we note that she found, and we agree, that prior to the existence of Respondent's Liberty Park facility, and before any employees were hired to work there, Respondent entered into an unlawful pre-hire contract which contained a union-security provision, and which was subsequently applied to the Liberty Park employees. In these circumstances, we agree with the Administrative Law Judge that an appropriate remedy and Order must include the reimbursement provisions set forth in her Decision.

We note that the hearing was held in 1981, rather than 1980 as the Administrative Law Judge inadvertently stated.

We will amend the notice to employees to accurately reflect the address and telephone number of the Regional Office.

August 30, 1982

ORDER GRANTING MOTION AND MODIFYING DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On June 22, 1982, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding. Thereafter, on July 13, 1982, Respondent R. J. E. Leasing Corp. filed a Motion for Reconsideration and/or Clarification of the Board's Order. By its motion, Respondent seeks clarification of the remedial portion of the Administrative Law Judge's Decision, as adopted by the Board. Thus, in the Remedy and in paragraph 1(c) of the Order, the Administrative Law Judge provided that Respondent shall cease giving effect to its contract with Local 814 "provided, however, that nothing in this Order shall authorize or require the withdrawal or elimination of any wage increase or other benefits . . . which may have been established pursuant to" that agreement. Respondent was further order to post a notice to employes, stating in relevant part, "We will not alter any wage increases or any other benefits put into effect as the result of" the contract. Respondent contends that these provisions in the Remedy, Order, and notice go beyond the traditional and appropriate remedy for violations of Section 8(a)(2), in which a respondent employer, while not *required* to withdraw wage increases or other benefits established pursuant to the invalid contract, is not forbidden to make such changes.[1]

No objection to the motion having been received, and the Board having duly considered the matter,

It is hereby ordered that Respondent's motion be, and it hereby is, granted.

IT IS FURTHER ORDERED that the Decision and Order in this case be, and it hereby is, modified as follows:

1. Strike from The Remedy section of the Administrative Law Judge's Decision the words "authorize or" appearing in the sentence "However, nothing in this Order shall authorize or require the withdrawal or elimination of any wage increases or other benefits, terms and conditions of employment

[1] Although neither Respondent nor any other party raised this issue in exceptions to the Administrative Law Judge's Decision, matters of remedy are traditionally within the Board's province, and may be addressed by the Board *sua sponte*.

which may have established pursuant to such an agreement."

2. Substitute the following for paragraph 1(c) of the Administrative Law Judge's recommended Order:

"(c) Giving effect to its collective-bargaining contract with said Local 814 or any renewal, extension, or modification thereof; provided, however, that nothing contained herein shall be construed as requiring Respondent to abandon or vary any wage, hour, seniority, or other substantive terms of employment which it may have established in the performance of said contract."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT assist or contribute support to Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT give effect to our collective-bargaining agreement with Local 814 or to any extension, renewal, or modification thereof; provided, however, that we are not required to abandon or vary any wage, hour, seniority, or other substantive terms of employment which we may have established in the performance of said contract.

WE WILL NOT encourage membership in Local 814 by requiring employees to join that organization as a condition of obtaining or retaining employment with us.

WE WILL NOT recognize, negotiate, or enter into any new agreement with Local 814 unless and until that Union has been certified as the representative of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the collective-bargaining representative of our employees, unless and until said labor organization has been certified by the National Labor Relations Board.

WE WILL reimburse all employees, former and present, for any dues and other moneys unlawfully exacted from them under our contracts with Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

DECISION

STATEMENT OF THE CASE

WINIFRED D. MORIO, Administrative Law Judge: This case was heard before me on January 19 and April 27–29, 1980, in Newark, New Jersey, pursuant to a complaint and notice of hearing which was issued on May 21, 1980, by the Regional Director for Region 22.[1] The complaint was based on charges filed by Richard Gaughran, an individual, on March 30, 1980, in Case 2-CA-9875 against R.J.E. Leasing Corporation (herein called Respondent).[2] In substance, the complaint alleges that Respondent granted recognition to and maintained and enforced a collective-bargaining agreement with Local 814, notwithstanding that Local 814 did not represent an uncoerced majority of Respondent's warehouse employees at the time recognition was granted and the collective-bargaining agreement was executed. The complaint further alleges that the aforesaid agreement contains a union-security provision which provides that employees, as a condition of enployment, shall become and remain members in good standing of Local 814 and pay dues and initiation fees to it. In addition the complaint alleges that Respondent, by its supervisors, rendered aid and assistance to Local 814 by urging its employees to sign union membership application cards for Local 814 and dues-check off authorizations; by collecting Local 814 initiation fees from its employees at the time of the employees' initial hire; by deducting Local 814 dues from its employees' pay prior to the completion of the statutory 30-day grace period during which no dues were owed; and by collecting Local 814 initiation fees on the work floor during worktime. The complaint alleges that the above conduct violated Section 8(a)(1) and (2) of the Act. The answer filed by Respondent denies the commission of the above-stated conduct.

During the hearing counsel for the General Counsel moved to amend the complaint to allege an additional theory under Section 8(a)(1) and (2) of the Act, in that Respondent recognized Local 814 as the collective-bargaining representative for certain of its employees and maintained and enforced a collective-bargaining agreement with Local 814 for these employees notwithstanding that at the time it engaged in such conduct Respondent did not employ a representative segment of its ultimate employee complement.[3] The motion to amend was granted over the objections of both Respondent and Local 814. The objections were renewed in the briefs filed by Respondent and Local 814. I find the objections to be without merit. It is clear that the complaint, as

[1] Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein Local 814 or the Union), was listed as a party in interest.

[2] The charge, as filed, alleges violations of Sec. 8(a)(1), (2), and (3) of the Act. The 8(a)(1) and (3) charge was withdrawn.

[3] The General Counsel contended that the complaint was amended after an examination of certain records not available prior to the hearing and which were secured by subpoena enforcement in a Federal court.

issued, initially attacked the recognition accorded to Local 814 and the collective-bargaining agreement entered into by Respondent with it. Thus, Respondent was aware throughout that the recognition it accorded to Local 814 and the collective-bargaining agreement it entered into with it were under attack. The fact that Respondent was not made aware of the additional theory until the hearing was due to its conduct and that of Local 814 in refusing to supply requested records. It was their decision not to disclose the records until forced to do so by the subpoena enforcement proceedings. Respondent and Local 814 cannot now complain that they have been prejudiced by their own actions. Furthermore, the parties were offered the opportunity for additional time to prepare their position on this theory and they opted not to seek it. Finally the matter has been fully litigated and briefed. In these circumstances, I do not consider that I am precluded from considering this alternative theory.[4]

All the parties were given a full opportunity to participate in the proceeding, to introduce all relevant evidence, to cross-examine witnesses, to argue orally, and to file briefs. Briefs were filed by all parties.

Upon the entire record in this case, my observation of the witnesses, and after due consideration, I make the following:

FINDINGS OF FACT

I. JURISDICTION

R.J.E. Leasing Corp. has maintained its principal office and place of business at 41 Horton Street, Malverne, New York, and has maintained various warehouses in the States of New York and New Jersey, including warehouses at 20 Statute of Liberty Drive, Jersey City, New Jersey, herein called the Liberty Park facility, and 59 Hook Road, Bayonne, New Jersey, herein called the Bayonne facility, where it is and has been engaged in providing and performing transportation and related services. In the course and conduct of its operations, Respondent, during the preceding 12 months, said operations being representative of its operations at all times material herein, transported clothing and other goods and materials valued in excess of $50,000 of which goods and materials valued in excess of $50,000 were transported, pursuant to an arrangement it had with various customers including Gimbel Brothers, to its various warehouses in interstate commerce directly from States of the United States other than the State New York. The parties admit and I find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The parties admit and I find that Local 814 is a labor organization within the meaning of Section 2(5) of the Act.

[4] *Meilman Food Industries, Inc.*, 234 NLRB 698 (1978); *Alexander Dawson, Inc. d/b/a Alexander's Restaurant and Lounge*, 228 NLRB 290 (1977).

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

According to Vincent Bracco, president of Local 814, the Union had contracts with Joseph Eletto Transfer Company (herein called Eletto) and Venetia Trucking (herein called Venetia) dating back several years.[5] The president of these companies is Joseph Eletto who, it appears, is also the principal officer of Respondent R.J.E. Eletto did not testify. Richard Funk, a general manager for the Eletto Company, testified that Respondent is a subsidiary of Eletto and although he did not know the details of its formation, he knew that Respondent commenced its operations at its Bayonne facility about November 1979 and began at the Liberty Park location about December 17, 1979.[6] The record establishes that Respondent and Local 814 executed a recognition agreement for the Bayonne facility on December 5, 1979, and executed a collective-bargaining agreement for that location sometime in December 1979.[7] The legality of the recognition agreement and the collective-bargaining agreement for the Bayonne facility is not an issue in this case.[8]

B. *The Events Prior to January 11*

For some years prior to December 1979, according to the undisputed testimony, a trucking and warehousing firm called Nelson Intermodel (herein called Nelson) occupied the premises at the Liberty Park facility and conducted warehousing and trucking operations at that facility for its customer, Gimbel's. However, Gimbel's, apparently dissatisfied with Nelson, terminated its business relations, with Nelson, effective about the end of December 1979. Gimbel's entered into an agreement with Respondent to provide distribution and trucking services for it at the Liberty Park facility. According to Funk, actual operations by Respondent at this location did not start until December 17, 1979, although some preliminary operations began about December 8, 1979. There is some confusing testimony on the issue of the employees engaged in these preliminary operations. However, an analysis of the testimony by Funk and the exhibits offered by Local 814 establishes that five new employees were hired for the Liberty Park facility and six employees already on the Bayonne payroll were assigned for overtime work to assist in the startup operations. Funk, in response to an inquiry by counsel for Local 814, identified the employees listed on Local 814's Exhibit 1 as those who were hired for the Liberty Park facility.[9] Funk fur-

[5] Respondent's counsel refers to Eletto as set forth above although the name appears in the transcript at times as Alito.

[6] Funk, at the times material herein, was on the payroll of the Eletto Company but acted in the capacity of general manager for that company and for Respondent R.J.E. at both the Bayonne and the Liberty Park facilities.

[7] G.C. Exhs. 7 and 8. The collective-bargaining agreement, on the face of it, contains effective date of July 1979 and a termination date of July 1982. This will be discussed below.

[8] There is no evidence that a charge was filed in connection with this location.

[9] Funk's testimonial:

Continued

ther testified that these five individuals were hired between the period of Monday through Friday, December 14, 1979, and were told specifically that they were hired for the Liberty Park facility, although they actually worked at the Bayonne facility due to the construction work being done at Liberty Park.[10] An examination of this exhibit establishes that Mark McGee, Paul Staver, and Gene Kreig were hired on December 12, 1979, for the Liberty Park facility and Charles Carucci and James McGrath were hired on December 14, 1979, for that location. Funk identified the six individuals who were on the Bayonne payroll and who were brought, on a temporay basis, to the Liberty Park facility by examining Local 814's Exhibit 2. This exhibit contains a column "B," which column designates overtime. According to Funk he determined which were the six individuals on temporary assignment from the Bayonne location by checking column "B" and noting which employees had either 8 or 10 hours marked next to their name in the overtime column. The exhibit discloses that the six individuals were Martin McMahon, Michael Vilardo, Raymond Wilson, Robert Harvin, Donald Sharp, and Joseph Serpe. Thus according to Funk, who was the only person who testified with knowledge about the employees utilized in the preliminary operations, as of December 14, 1979, Respondent had hired five new employees for its Liberty Park facility and had assigned, on a temporary basis, six of its Bayonne employees to that location.

On December 14, 1979, an agreement was entered into between Respondent and Local 814.[11] The agreement, on its face, refers to Liberty Park. However, Vincent Bracco testified that this document was entered into solely to protect those Bayonne employees who were transferred to work on a temporary basis at Liberty Park. He stated, "people from Bayonne were going to work at Liberty Park, another facility and it was the people from Bayonne and I felt that Mr. Aleto was trying to avoid the contract that we had entered into." At another point Bracco stated:

> Well I was a little upset that I felt he was trying to run away from us and open another facility after I had gotten the stipulation and a contract for Bayonne, that he was putting our people there and I thought he was going to bypass the Bayonne facility and go into Liberty Park and I demanded to protect those people with the Bayonne contract and that he should exercise the contract at Bayonne for them [sic] people that he was employing from Bayonne to Liberty Park.

The gist of these statements is that the purpose of the agreement of December 14, 1979, was to ensure that the Bayonne contract would be applied to Bayonne employees even though they were working at the Liberty Park facility. Bracco did not claim to have secured authorization cards from any of the newly hired employees, but rested his authority to execute the December 14 agreement on his representative status at Bayonne. An examination of the document establishes that it contains language usually identified with a recognition agreement. Thus the document, which refers solely to the Liberty Park facility, states that Respondent had examined authorization cards presented by Local 814, was satisfied that Local 814 represented its employees at Liberty Park, and recognized Local 814 as the collective-bargaining representative of its employees. It is identical to the language contained in the document which both Respondent and Local 814 admit is a recognition agreement executed on December 5 for the Bayonne facility.[12] In addition, although he subsequently changed his testimony, Funk testified that Joseph Eletto told him sometime in mid-December that he had recognized Local 814.[13] At the time the document in question was executed the Respondent, as noted, had hired only five employees for that location. It appears that of the five employees McGrath and Carucci signed authorization cards for Local 814 on December 14, Staver and Kreig signed authorization cards on December 17, and McGee had initiation fees deducted on December 17.[14] It also appears that at this point five of the six Bayonne employees who were transferred on a temporary basis to the Liberty Park facility had signed cards for the Bayonne facility on December 4.[15] Local 814 therefore had secured authorization cards from two of the five employees hired either on or prior to December 14 for the Liberty Park facility and had in its possession five authorization cards from the Bayonne employees, which cards were obtained in connection with the collective-bargaining agreement in effect at the Bayonne facility. Respondent and Local 814

Counsel: I show you Union's Exhibit 1. Would you describe what these individuals were hired for.

Funk: So we hired these five people, set them up in Bayonne in a big room like this, tying thousands of knots for Liberty Park.

Judge: When did you hire these people?

Funk: We hired them Monday through Friday, the period ending December 14.

Judge: Of December?

Funk: Correct, of '79.

Judge: And they were then put on the Liberty Park payroll or were they put on the Bayonne payroll?

It was the first time that, I guess, we kept these names and I can see by looking at this sheet they were separate, so it was like we established a Liberty Park sheet, shall we say. But they were paid over in the Bayonne facility.

Judge: Mr. Funk were the people told when they were hired that they were working at Liberty Park?

Funk: These five people.

Judge: The five people you hired?

Funk: Yes.

Judge: For Liberty Park?

Funk: Yes, absolutely.

[10] Funk testified that the renovation work being done at Liberty Park was extensive and that the newly hired employes could not work there because of the condition of the premises.

[11] G.C. Exh. 6.

[12] G.C. Exh. 7.

[13] Funk stated subsequently that it was mid-January when Eletto told him that he had granted recognition to Local 814.

[14] G.C. Exh. 19.

[15] G.C. Exh. 19. According to this exhibit McMahon, Vilardo, Wilson, Sharp, and Serpe all signed authorization cards on December 4, 1979. The exhibit does not disclose the name of Robert Harvin. The exhibit lists three Vilardos but only one Michael Vilardo and two Wilsons but only one Raymond Wilson. It is Michael Vilardo and Raymond Wilson who appear on Local 814's Exh. 2.

contend that the letters "RJF" at the top of the Union's Exhibit 1 indicate that it is the payroll for the Liberty Park facility. An examination of that exhibit, which is the payroll record for the period ending December 14, lists only the five newly hired employees. An examination of the payroll records for December 21 and 28, 1979 also reveals the letters "RJF" at the top of the exhibit. These payroll records list the names of the five newly hired employees but they do not contain the names of any of the six temporarily transferred employees. The payroll record for Liberty Park contains a total of 35 names of people hired for that facility in the week ending December 21, 1979, and a total of 98 names for people hired for that facility for the week ending December 29, 1979.

The parties were in disagreement concerning the use of the words "department" and "classifications." The collective-bargaining agreements alleged to be for the Liberty Park facility list seven classifications.[16] Respondent, however, apparently divided its work force into some 16 departments, of which the employees in only 12 departments are included in the collective-bargaining agreements.[17] According to Funk, an employee in the contract classification of warehouseman would be in department "1000"; in the contract classification of maintenance man would be in department "D"; in the contract classification of packer-marker would be in department "7000"; in the contract classification of order-checker would be in department "300"; in the contract classification of platform-loader and receiving man would be in department "1000"; and in the contract classification of dock supervisor would be department "8000." The record does not reveal what would be the department for the contract classification of packing and mailing supervisor apparently because there was no one in that position in either December 1979 or June 1980. An examination of the payroll of December 21 reveals that all five employees hired in the week ending December 14 for Liberty Park were in department "1000," which means that they were either in the contract classification of warehouseman or the contract classification of platform loader or that there could have been employees in both classifications.[18] Thus, it appears that on December 14 Respondent had employees in either 1 or 2 of the 7 contract classifications and apparently in only 1 of its 12 departments. In the weeks of December 21 and December 29 Respondent had employees in 3 or 4 of the contract classifications and in 7 of its 12 departments. By June 1980, Respondent had employees in 6 of the 7 contract classifications and in 11 of its 12 departments.

C. *The Testimony of Richard Gaughran*

Richard Gaughran, previously employed by Nelson, testified that he sought employment with Respondent in December. According to Gaughran, based on a recommendation of a Jack Hill, he met with Funk on December 19, 1979.[19] At that meeting Funk gave him a work history form to complete and made an appointment to meet with him at the Bayonne facility on December 21. When he arrived at the meeting, in addition to Funk he met with Jim Vaughan, an assistant to Funk, and Charles Agar, a Local 814 business representative. Funk, Vaughan, and Agar did not testify about this meeting. Gaughran testified that Funk told him he had the chance to join Local 814 for $10 instead of $200, questioned him as to whether he had the $10, and then handed him a Local 814 card to complete.[20] When he completed the card Funk told him Local 814 would be his local and he was to start work on December 26. Gaughran testified that at least one other employee was interviewed in the same fashion. According to Gaughran at that point in late December there were about 8 employees in his section and a total of 90 employees working at the Liberty Park facility.

Gaughran further testified that on January 3, 1980, he was paged over a public address system at the Liberty Park facility and told to report to the office. When he arrived at the office Jim Vaughan handed him a receipt for Local 814 initiation fees.[21] Gaughran testified that he heard other employees similarly paged to the office on January 3, 1980, although he could name only a Howard Olsen. Gaughran was paged again in late January over the public address system and told to report to the office. When he arrived at the office Vaughan handed him his Local 814 membership card.[22] Gaughran claimed that several employees were paged to the office on that day although only Olsen was present when Vaughan gave Gaughran his membership card. Gaughran was paid on a weekly basis. On January 22, 1980, Gaughran received his paycheck.[23] The paystub, which is dated January 25, 1980, shows that the sum of $12 was deducted from his pay for dues to Local 814. In early February 1980, Gaughran was paged a third time over the public address system, along with others, and told to report to the office. During this meeting Vaughan handed him a receipt for his payment of Local 814 dues.[24] Gaughran said that Howard Olsen and several other employees were also paged on that day. Gaughran testified that Olsen received his Local 814 dues receipt at the same time he did in his presence.

D. *The Collective-Bargaining Agreements*

Bracco testified that sometime around January 11, 12, or 13, 1980, he contacted Joseph Eletto to advise him that he had secured authorization cards from a majority of his employees and therefore they should begin negotiations. At this point, Bracco claims he had about 135 authorization cards in a unit consisting of about 200 employees. An examination of General Counsel's Exhibit 19

[16] These classifications are warehouseman, maintenance man, packer-marker, order-checker, platform loader and receiving man, packing and mailing supervisor, and dock supervisor.

[17] G.C. Exh. 18. The return to vendor employees, general office clerical employees, payroll department employees, and PBX employees are not covered by the contract.

[18] Funk did at one point testify that there were no warehousemen hired in December 1979.

[19] Hill had worked with Gaughran at Nelson.

[20] G.C. Exh. 11.

[21] G.C. Exh. 12.

[22] G.C. Exh. 13.

[23] G.C. Exh. 15.

[24] G.C. Exh. 14.

discloses that 109 of these cards were signed either on the day the individuals actually started to work or on the day the individuals were hired. The remaining authorization cards were signed on the day after the employees actually started to work.[25] On or about January 11 Bracco, according to his testimony, had a meeting with Eletto at Local 814's office where he gave Eletto about 125 authorization cards for Local 814, told Eletto to check them, and provided him with desk space to do so. Later that day Eletto notified Bracco that he was satisfied that the people from whom Bracco had secured cards were employed at the Liberty Park facility and that Local 814 represented them. Negotiations then began. Bracco, who was the only person to testify concerning the negotiations, did not claim to have spoken to the Liberty Park employees concerning their desires either before he began negotiations or at any time during the negotiations. Insofar as this record discloses Bracco conducted these negotiations without input from the employees and approved the final offer without consultation with the employees. Bracco claimed that the negotiations extended over a 2-day period although he was hazy on the details of the negotiations. A complete collective-bargaining agreement was executed at the Local 814 office during the week of January 12, 1980, according to Bracco, although neither the original nor the corrected copies of the collective-bargaining agreement contain the date of execution.[26] Bracco testified that the standard Local 814 contract does not contain the date of execution on the face of it; rather, he relies on the day Local 814 commences to collect dues to establish the day the contract is signed. Within a few days of the execution of this document, Eletto called Bracco to advise him that there was a mistake in the rate for the packer-marker classification. The rate as set forth was $4.50 per hour rather than $3.80 per hour as agreed to by the parties.[27] Bracco agreed with Eletto that an error had been made and he thereafter sent an entirely new collective-bargaining agreement containing the corrected wage to Eletto for his signature. An examination of these two collective-bargaining agreements establishes that the opening paragraph in each states that the effective date of the contract was July 1979. The closing paragraphs in both documents also state that the contract was to be effective from the first day of July 1979 to June 30, 1982. Bracco, when questioned as to whether Eletto had called his attention to these serious errors, admitted that Eletto had not mentioned these mistakes to him. Bracco also apparently did not notice these errors. Bracco's explanation for the July 1979 dates in both contracts is confusing. He testified, "Our secretary, when she drafted up the documents, put them in. We had our next increase, the second increase of this contract was July 1980 and she turned around therefore and assumed they're year to year and put July lst of 79." It appears that Local 814's secretary sets the contract dates. It should be noted that the contract submitted as to the collective-bargaining agreement for the Bayonne location also contains an effective date of July 1979 both in the opening and the conclusionary paragraphs.[28] All the contracts show pay increases effective July 1, 1979, and July 1, 1980. A further examination of the three collective-bargaining agreements discloses differences in the recognition clause. Thus the collective-bargaining agreement for the Bayonne location states the following:

> "The Employer recognizes the Union as the exclusive bargaining agent of the employees of the above-named Employer within the unit of warehousemen, maintenance men, packers and markers; order checkers, platform loaders and receiving new, packing and mailing supervisors and dock supervisors."[29]

The two collective-bargaining agreements which purportedly cover the Liberty Park location contain the following language:

> The Employer recognizes the Union as the exclusive collective-bargaining agent of the employees of the above-named Employer, within the unit of warehousemen, maintenance men, packers and markers, order checkers, platform loaders, receiving men, packing and mailing supervisors and dock supervisors, working in *Liberty Park* and *Bayonne*, New Jersey. [Emphasis supplied.][30]

It does not appear that either Eletto or Bracco noticed that the two collective-bargaining agreements allegedly for Liberty Park also covered the Bayonne location or that both referred to pay increases effective in July 1979. Both collective-bargaining agreements contain union security, initiation fees, and dues-checkoff provisions.

Gaughran testified that on January 14, 1980, he saw an announcement on the bulletin board of Respondent's Liberty Park facility which stated that there would be a Local 814 meeting for each department, one half hour before the starting shift on January 16, 1980. Gaughran attended the meeting, which was held near the main entrance in the Liberty Park facility. The meeting started at or about 11:30 a.m. All of the approximately 24 shipping department employees were present. There were two Local 814 representatives present although Gaughran could only identify Charles Agar. The Local 814 representative distributed two leaflets, which were entitled "Welfare and Pension Benefits and Contract Highlights."[31] The employees and the Local 814 representa-

[25] These numbers were determined by examining G.C. Exh. 19 and Local 814 Exhs. 3 and 4. Respondent and Local 814 take the position that the employee's date of employment commences either on the day the employee completes a W-2 form, although actual work may not be started until a few days thereafter or on the day the employee actually starts working. There were 37 individuals who signed cards on the day they signed their W-2 forms although they did not start work until a few days thereafter. There were four employees who allegedly signed cards on the day they signed their W-2 forms although the exact date they signed the W-2 forms is not known.

[26] G.C. Exhs. 9 and 10.

[27] G.C. Exh. 9.

[28] G.C. Exh. 8.

[29] The employer named is R.J.E. Leasing Corp.

[30] It should be noted that the Employer listed on G.C. Exhs. 9 and 10 is R.J.E. Leasing Corp. Funk testified, however, that after the Liberty Park facility began, and certainly by December 21, 1979, the correct designation for the Liberty Park facility was R.J.F. G.C. Exhs. 21 and 22, Local 814 Exh. 1.

[31] G.C. Exhs. 16 and 17.

tive discussed the contract and the Local 814 representative said the wage rate would be the one in effect and all other benefits would become effective in July 1980. It does not appear from an examination of these documents and Respondent's payroll that the employees were to receive any immediate benefits. This record fails to establish why the highlights of a collective-bargaining agreement negotiated in January 1980 for the Liberty Park facility contains a section referring to a wage scale effective July 1979.

The evidence establishes that initiation fees were deducted for Local 814 from on or about December 17, 1979, and dues were deducted from on or about January 19, 1980.[32]

E. *Analysis*

Respondent and Local 814 assert that the December 14 document covering the Liberty Park facility was not a recognition agreement but was rather an agreement entered into to ensure that Bayonne employees, on temporary assignment at Liberty Park, would be covered hy the Bayonne collective-bargaining agreement. I do not credit this assertion. The document, on its face, unambiguously states that Respondent recognizes Local 814 as the collective-bargaining representative of its employees at Liberty Park and it further states that this grant of recognition was based on an examination of the authorization cards submitted to Respondent by Local 814. Language identical to that contained in the December 14 document is found in the document relating to the Bayonne facility, which document both Respondent and Local 814 concede is a recognition agreement.[33] Moreover, the December 14 document does not refer to the Baycnne facility or the fact that the Bayonne collective-bargaining agreement was to be applied to Bayonne employees. It is improbable that Local 814 representatives, experienced as they are, would have drafted this type of document if it was for the purpose testified to by Bracco. It is also impossible to believe that any employer would have agreed to execute this document which purportedly related to the Bayonne employees when it contains no reference to the Bayonne employees or the Bayonne collective- bargaining agreement. Bracco's contention that it related to the Bayonne employees is belied by the clear language of the document. The Board has rejected parol evidence to change a document when the language contained in the document is clear and unambiguous.[34] The Board also has refused to accept parol evidence to establish a modification of a written agreement.[35] Accordingly, I find that the document executed on December 14, 1979, was meant by the parties to be and is a recognition agreement covering the Liberty Park facility. In view of their position concerning the December 14 agreement, i.e., that it is not a recognition agreement, Respondent and Local 814 have not addressed the issue of the status of Local 814 on December 14, 1979. Rather, they direct attention to the status of Local 814 at the time of the execution of the collective-bargaining agreement, which they allege occurred sometime in January 1980. This however begs the crucial issue, which is the status of Local 814 on December 14, 1979. The credible evidence establishes that by that day Respondent had hired five employees for its Liberty Park facility and of these employees only two had executed authorization cards for Local 814 prior to the execution of the recognition agreement on December 14, 1979. Clearly Local 814 had not gained an uncoerced majority status at the time recognition was extended by Respondent. The authorization cards secured by Local 814 for another location cannot be used in support of Local 814's majority status at this location. A grant of recognition to a miniority union is a clear abridgement of the Section 7 rights of employees and a violation of Section 8(a)(1) and (2) of the Act.[36] Moreover in the circumstances involved herein a violation would have occurred at the time of the grant of recognition on December 14, 1979, even assuming that Local 814 had in fact secured valid authorization cards from all five employees. This is so because at that time on December 14, 1979, the five employees were not substantially representative of Respondent's anticipated work force and Respondent was not in its normal operation. Thus, in the week following the execution of the recognition agreement Respondent's work force increased from 5 to 35 employees, in the week thereafter it escalated to 93 employees, and at the time of the alleged execution of the collective-bargaining agreement, about a month thereafter, the total complement of employees numbered in excess of 150 individuals. In addition to this fact, the record reveals that at the time of the grant of recognition there were at most only two of the seven classifications set forth in the collective-bargaining agreement in existence. Moreover, there is no dispute that Respondent was not engaged in its normal operations at the Liberty Park facility on December 14, 1979. As noted, Funk testified that the five newly hired employees could not actually work at that location because there was such chaos. The entire area was being renovated to provide the necessary work area for the anticipated growth in the work force. As stated in *Cowles Communication, Inc. and Supsun Co., Inc.*, 170 NLRB 1596, 1611 (1968):

> Where an employer recognizes a union as the exclusive bargaining representative of its employees on the basis of a majority demonstrated by cards or a petition, as here, such recognition is inappropriate and unlawful if it is granted before the employer has recruited a work force that can be considered substantially representative of his anticipated complement of employees.

The Board has found that the vice, in such a premature grant of recognition, to be the employer's committing the unhired great majority of the employees to a bargain-

[32] G.C. Exh. 19.

[33] G.C. Exh. 7.

[34] *Prestige Bedding Company, Inc.*, 212 NLRB 690, 700 (1974).

[35] *P.C. Foods, Inc., d/b/a Price Crusher Food Warehouse*, 249 NLRB 433, 438 (1980); *Schorr Stern Food Corp.*, 227 NLRB 1050, 1653–64 (1977).

[36] *International Ladies' Garment Workers Union AFL-CIO [Bernhard-Altmann Texas Corp.] v. N.L.R.B.*, 366 U.S. 731, 738 (1961); *Sanford Home for Adults*, 253 NLRB 1132 (1981); *Gold Standard Enterprises, Inc., et al.*, 249 NLRB 356, 361 (1980); *Siro Security Service, Inc.*, 247 NLRB 1266 (1980).

ing representative in whose selection they have had no choice.[37] The Board has held that such a grant of recognition at a time when the union did not represent a substantially representative complement of the anticipated work force and when the company was not in normal operations to be violative of Section 8(a)(1) and (2) of the Act.[38] The reliance by Respondent and Local 814 on the holding in *Hayes Coal Co., Inc.*, 197 NLRB 1162, 1163 (1972), and *Milton Kline and Jacob Kline a Co-Partnership d/b/a Klein's Golden Manor*, 214 NLRB 807 (1972), is misplaced. In *Hayes*, contrary to the situation herein, the Board found that respondent met the test that the job or job classifications were substantially filled and that the employer was in normal or substantially normal operation. Moreover, the Board noted in *Hayes, supra* at 1163 that even though the expectation of increasing was realized, "the record shows that the addition of a second shift was caused and justified by economic factors which occurred subsequent to its recognition of the Union. The uncertainty of those expectations was demonstrated when economic factors shifted so rapidly that Respondent was forced to cease operations by the year's end." And in *Klein's, supra* at 815 the finding was made that the employer had 18 employees when it commenced operations and they constituted in number 90 percent of Respondent's entire staff of employees during the first week it was open for business, the same percentage of Respondent's average number of employees (20) during the next 3 months of its operations, and about 65 percent of Respondent's average weekly complement (26) during the balance of the year.

The factors present in *Hayes* and *Klein's* are not present herein. This Respondent was not relying on some future factor by virtue of which it expected to expand. It already had secured the contract with Gimbel's and in implementing that contract it was expanding. Furthermore the five employees certainly did not represent 90 percent of Respondent's work force even within a week after the start of operations andd certainly they did not represent 90 percent at the time of the alleged execution of the collective-bargaining agreement.

Respondent and Local 814 contend however that even if the recognition was granted prematurely such a grant should not be considered a violation because the lack of a union-security provision in the recognition agreement establishes that the agreement was without coercive effect. This argument, however, does not find support in Board law. The Board has found that the very existence of a collective-bargaining agreement with a minority union, although not enforced, is sufficient to warrant finding a violation because such a document can be asserted as a bar to a representation petition filed by another labor organization.[39] In the circumstances herein involved it must be assumed that Respondent and Local 814 did not engage in a meaningless act when they executed the December 14 document. It is clear that if the need arose the document would have been used to prevent another labor organization from legitimately representing these employees. In this situation, I am not persuaded that the recognition agreement is without coercive effect. Nor do I find Board or court support for the proposition that authorization cards secured from a majority of the employees prior to the execution of the collective-bargaining agreement validate the earlier illegal recognition. Assuming that valid authorization cards were secured prior to the execution of the collective-bargaining agreement, this would not cure the earlier illegal conduct. To the contrary, the Supreme Court has found that the initial illegal act tainted all that followed and the fact that the Union might gain majority status prior to the execution of the contract to be immaterial.[40] This opinion has been restated in a recent case. Thus in *Hollander Home Fashion Corp.*, 255 NLRB 1098, 1102 (1981), the following was stated:

> Because, as was found above, Respondent's relationship with the Industrial Workers was illicit from the outset, its subsequent course of dealings with the Union was tainted as well. Thus, the relatively expeditious execution of a contract which was negotiated without any involvement of the employees or assessment of their interests and needs merely represented another phase in Respondent's strategy to superimpose a compliant union on its unwitting workers.

A very similar situation exists herein, there is no evidence that there was involvement by employees in the negotiations nor is there evidence that there was an assessment of their needs. It is no response to say that employee interest will not be served by finding a violation or by stating that only one employee filed the charge. It is questionable whether employee interests are served by having a collective-bargaining agreement imposed on them in which they have had no voice, and which appears to have given them no benefits but obligated them to pay dues and initiation fees to Local 814. There can be no question that the invalidity of the recognition agreement taints the collective-bargaining agreement that followed from it.[41]

Respondent and Local 814 did not address the issue of Local 814's minority status on December 14, 1979, based on the lack of sufficient authorization cards from the five employees hired for Liberty Park. The thrust of their argument rather is directed toward the expansion issue and in support of that argument they cite *The Anaconda Company*, 225 NLRB 953 (1976). Once again their reliance is misplaced. In the *Anaconda* case the union had gained majority status in the then existing unit, albeit it was in an expanding unit, prior to the grant of recognition. Thus in that case the union had secured 9 valid au-

[37] *Lianco Container Corporation*, 173 NLRB 1444, 1448 (1969).

[38] *Price Crusher Food Warehouse, supra* at 438 (1980); *Baines Service Systems, Inc.*, 248 NLRB 563, 567 (1980); *Crown Cork & Seal Company Inc.*, 182 NLRB 657, 662 (1970); *Donald Leasure, Jr., Harold Leasure and Charles Bankasky d/b/a Leasure Coal Company*, 182 NLRB 1011, 1013-14 (1970).

[39] *Margaret Anzalone, Inc.*, 242 NLRB 879, 887 (1979).

[40] *International Ladies' Garment Workers Union* v. *N.L.R.B., supra* at 738.

[41] *Gold Standard Enterprises, Inc., supra* at 361; *Margaret Anzalone, Inc., supra* at 887; *Canteen Corporation*, 202 NLRB 767, 769, 770 (1973).

thorization cards from a possible 11 authorization cards at the time the employer recognized the union. In the instant case, as stated above, the Union had secured only two valid authorization cards at the time Respondent entered into the recognition agreement. The Board in the *Anaconda* case found that there was not a scintilla of evidence indicating restraint, favoritism, coercion, or interference on the part of Respondent. Certainly this cannot be said here when Respondent recognized the Union at the point when it did not represent an uncoerced majority of the five employees hired for Liberty Park. Moreover, in the *Anaconda* case the Board was faced with a situation involving an expansion in the unit which was to occur over several years. The Board was concerned with the lack of representation for several years for the employees involved therein. In this case, the expansion took place within approximately 3 weeks after Respondent commenced operations. There would be no lengthy period of time during which the employees would be without representation, the problem with which the Board was concerned in the *Anaconda* case. Moreover, it does not appear that the third criteria set forth in the *Anaconda* case exists in this one. It is questionable whether there was an arm's length bargaining, a fact which will be discussed hereafter.

The General Counsel contends that the circumstances surrounding the solicitation of Gaughran's authorization card by Funk together with the fact that the bulk of the authorization cards were signed by employees either on the day they actually commenced work, or the day they signed their W-2 forms warrants the inference that Respondent aided Local 814 by its supervisors soliciting signed authorization cards from all prospective employees in the preemployment interviews. Although these circumstances do raise certain suspicions, these suspicions are insufficient to warrant the inference sought by the General Counsel. Nor do the cases cited by the General Counsel support his proposition. In those cases there existed significant factual differences. Thus in one case supervisors directly solicited several employees to sign authorization cards for the assisted union, while in another the employer permitted group solicitation of employees by union representatives in their presence and in a third case the supervisors threatened employees with discharge if they refused to sign authorization cards for the assisted union. These factors do not exist in the instant case. Rather, there is one situation involving direct evidence of Respondent's solicitation in a preemployment interview from which the General Counsel seeks to establish that over 100 authorization cards were secured in the same fashion because of the date on those cards. I am not of the opinion that such a sweeping generalization is warranted based on the above-cited factors.

There remains for consideration the contention by the General Counsel that the collective-bargaining agreement covering the Liberty Park facility was a prehire agreement.[42] Bracco testified that the collective-bargaining agreement for Liberty Park was arrived at after 2 days of negotiations sometime in mid-January 1980. Notwithstanding this testimony both collective-bargaining agreements, allegedly drafted in January 1980, contain an effective date of July 1979.[43] I do not credit Bracco's testimony that this was due either to a clerical mistake or to the fact that a standard contract was used and the dates were not corrected to reflect the date the contract actually was entered into by the parties. Both documents not only reflect an effective date of July 1979 but also provide for pay increases effective July 1979. Bracco's explanation for this "error" is, to say the least, not convincing. Moreover both documents, which were drafted allegedly only for the Liberty Park facility, on their face state that the unit includes all employees at both the Liberty Park facility and the Bayonne facility. This is interesting because an examination of the collective-bargaining agreement purportedly for the Bayonne facility does not refer to that facility at all.[44] Further it is difficult to accept Bracco's explanation for the existence of the two documents for the Liberty Park facility. Bracco claims that the two complete contracts were drafted to make one small correction concerning one pay scale. Assuming that such occurred, which is highly unlikely, it means that both Joseph Eletto and Bracco had two opportunities to notice the more blatant errors relating to the effective date of the contract and the unit description and both failed to notice these obvious mistakes I do not credit Bracco's explanation for the existence of the two contracts. Furthermore the documents drafted by Local 814 to highlight for the employees at Liberty Park the benefits they were to receive also state that a wage increase was effective July 1979. Why would a leaflet drafted for employees at a Liberty Park reflect a wage increase effective 6 months before the facility came into being? Even if one were to accept Bracco's testimony about the dates in the contracts there is no rational explanation for this leaflet. In sum I do not credit that the collective-bargaining agreement covering some 200 employees was negotiated in less than 2 days without any participation by the employees or without at least consultation with them prior to execution of that document by the Union. Rather I find that the collective-bargaining agreement was negotiated prior to the existence of the Liberty Park facility and was thereafter applied to that facility in January 1980 when the facility became operational. A prehire agreement has been permitted under limited circumstances in the construction industry and in some situations involving accretion. Neither of these circumstances exists herein. Nor is the argument by Respondent and Local 814 persuasive that if the prehire agreement was entered into in July 1979 the complaint must be dismissed by reason of the bar of time since the execution of the agreement occurred prior to the 10(b) period. The actual date the parties entered into the prehire agreement is not disclosed by the evidence in this record. However, the record does disclose that the employees first became aware that there was a collective bargaining agreement in effect at the Liberty Park facility in January 1980 which was within the 10(b) period. As stated in *Crown Cork & Seal Company, Inc.*, 255 NLRB 14, 22 (1981):

[42] G.C. Exh. 10.

[43] G.C. Exhs. 9 and 10.

[44] G.C. Exh. 8.

> The Board, with the agreement of reviewing United States courts of appeal, has held that the 6-month limitations period does not begin to run until the party affected by unfair labor practices is on actual or constructive notice of the material events giving rise to a charge, thus effectively estopping a wrongdoer who has engaged in fraudulent concealment of his unlawful conduct from using such concealment to permit a 10(b) defense.

This is clearly the situation in the instant case, the employees became aware of the illegal prehire agreement in January 1980 when it was applied to them and thus 10(b) is not a defense to the illegal prehire agreement.[45]

Based on all of the above, I conclude that Respondent unlawfully assisted and supported Local 814 and violated Section 8(a)(1) and (2) of the Act when it unlawfully extended recognition to Local 814 at a time when Local 814 did not represent an uncoerced majority of Respondent's employees and at a time when Respondent did not employ a representative segment of its ultimate employee complement. I further conclude that Respondent rendered unlawful assistance and support to Local 814 and violated Section 8(a)(1) and (2) of the Act by entering into a prehire agreement with it and maintaining said agreement in force and effect, which agreement contains a union-security provision which requires membership as a condition of employment and which requires Respondent to deduct dues, initiation fees, and/or uniform assessments. Finally, I conclude that Respondent has rendered unlawful assistance and support to Local 814 by deducting dues, initiation fees, and/or uniform assessments for Local 814 and by soliciting employees to sign authorization cards for Local 814.

IV. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend an order directing it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

More particularly, having found that Respondent has interfered with, restrained, and coerced its employees in the exercise of their rights to freely select their own bargaining representative in that Respondent unlawfully supported, assisted, and recognized Local 814, the Order I shall recommend will require Respondent to cease providing such unlawful support and assistance, and to withdraw and withhold all recognition from Local 814 unless and until Local 814 shall have been certified by the Board as the exclusive bargaining representative of Respondent's employees in question. The Order shall further direct Respondent to cease giving effect to the contract or agreement with Local 814, or to any renewal, modification, or extension of such agreement. However, nothing in this Order shall authorize or require the withdrawal or elimination of any wage increase or other benefits, terms, and conditions of employment which may have been established pursuant to such an agreement. The Order shall also require Respondent to reimburse all present and former employees for all initiation fees, dues, and other moneys which may have been exacted from them by, or on behalf of, Local 814 pursuant to the aforementioned collective bargaining agreements together with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).

[45] *AMCAR Division, ACF Industries, Incorporated*, 234 NLRB 1063 (1978).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 814 is a labor organization within the meaning of Section 2(5) of the Act.
3. By recognizing as the exclusive bargaining representative of its employees and by executing a contract with Local 814 covering such employees at a time when Local 814 did not represent an uncoerced majority of such employees and when Respondent did not employ a work force which was substantially representative of its anticipated complement of employees, by maintaining such contract in effect and by assisting Local 814 in obtaining union authorization cards from its employees, Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.
4. By including in said contract provisions for union security, initiation fees, and dues deduction, Respondent has violated Section 8(a)(1) and (2) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER[46]

The Respondent, R.J.E. Leasing Corp., Malverne, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assisting Local 814 by soliciting authorization cards from its employees.

(b) Recognizing and negotiating with Local 814 as the exclusive representative of its employees for the purpose of collective bargaining unless and until such labor organization is certified by the Board as the exclusive representative of said employees pursuant to Section 9(c) of the Act.

(c) Enforcing or giving effect to its collective-bargaining agreement with Local 814 or any extension, renewal, or modification thereof or any superseding agreement, provided, however, that nothing in this Order shall authorize or require the withdrawal or elimination of any wage increase or other benefits or terms and conditions of employment which may have been established pursuant to such a contract.

[46] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Local 814 as the exclusive collective-bargaining representative of its employees, unless and until said labor organization has been duly certified by the Board as the exclusive representative of such employees.

(b) Reimburse all present and former employees for all initiation fees, dues, assessments, or any other moneys which may have been paid in favor of Local 814.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of dues and any other moneys to be repaid under the terms of this Order.

(d) Post at its warehouse and office copies of the attached notice marked "Appendix."[47] Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by a representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[47] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."